

1 regarding qualification for
2 agricultural-related exemptions; providing an
3 effective date.
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5 Be It Enacted by the Legislature of the State of Florida:
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7 Section 1. Paragraphs (a) and (c) of subsection (4),
8 paragraph (a) of subsection (5), and paragraph (c) of
9 subsection (6) of section 70.001, Florida Statutes, are
10 amended to read:

11 70.001 Private property rights protection.--

12 (4)(a) Not less than 180 days prior to filing an
13 action under this section against a governmental entity, a
14 property owner who seeks compensation under this section must
15 present the claim in writing to the head of the governmental
16 entity, except that if the property is classified as
17 agricultural pursuant to s. 193.461, the notice period is 90
18 days. The property owner must submit, along with the claim, a
19 bona fide, valid appraisal that supports the claim and
20 demonstrates the loss in fair market value to the real
21 property. If the action of government is the culmination of a
22 process that involves more than one governmental entity, or if
23 a complete resolution of all relevant issues, in the view of
24 the property owner or in the view of a governmental entity to
25 whom a claim is presented, requires the active participation
26 of more than one governmental entity, the property owner shall
27 present the claim as provided in this section to each of the
28 governmental entities.

29 (c) During the 90-day-notice period or the
30 180-day-notice period, unless extended by agreement of the
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1 parties, the governmental entity shall make a written
2 settlement offer to effectuate:

3 1. An adjustment of land development or permit
4 standards or other provisions controlling the development or
5 use of land.

6 2. Increases or modifications in the density,
7 intensity, or use of areas of development.

8 3. The transfer of developmental rights.

9 4. Land swaps or exchanges.

10 5. Mitigation, including payments in lieu of onsite
11 mitigation.

12 6. Location on the least sensitive portion of the
13 property.

14 7. Conditioning the amount of development or use
15 permitted.

16 8. A requirement that issues be addressed on a more
17 comprehensive basis than a single proposed use or development.

18 9. Issuance of the development order, a variance,
19 special exception, or other extraordinary relief.

20 10. Purchase of the real property, or an interest
21 therein, by an appropriate governmental entity.

22 11. No changes to the action of the governmental
23 entity.

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25 If the property owner accepts the settlement offer, the
26 governmental entity may implement the settlement offer by
27 appropriate development agreement; by issuing a variance,
28 special exception, or other extraordinary relief; or by other
29 appropriate method, subject to paragraph (d).

30 (5)(a) During the 90-day-notice period or the
31 180-day-notice period, unless a settlement offer is accepted

1 | by the property owner, each of the governmental entities
2 | provided notice pursuant to paragraph (4)(a) shall issue a
3 | written ripeness decision identifying the allowable uses to
4 | which the subject property may be put. The failure of the
5 | governmental entity to issue a written ripeness decision
6 | during the applicable 90-day-notice period or 180-day-notice
7 | period shall be deemed to ripen the prior action of the
8 | governmental entity, and shall operate as a ripeness decision
9 | that has been rejected by the property owner. The ripeness
10 | decision, as a matter of law, constitutes the last
11 | prerequisite to judicial review, and the matter shall be
12 | deemed ripe or final for the purposes of the judicial
13 | proceeding created by this section, notwithstanding the
14 | availability of other administrative remedies.

15 | (6)

16 | (c)1. In any action filed pursuant to this section,
17 | the property owner is entitled to recover reasonable costs
18 | and attorney fees incurred by the property owner, from the
19 | governmental entity or entities, according to their
20 | proportionate share as determined by the court, from the date
21 | of the filing of the circuit court action, if the property
22 | owner prevails in the action and the court determines that the
23 | settlement offer, including the ripeness decision, of the
24 | governmental entity or entities did not constitute a bona fide
25 | offer to the property owner which reasonably would have
26 | resolved the claim, based upon the knowledge available to the
27 | governmental entity or entities and the property owner during
28 | the 90-day-notice period or the 180-day-notice period.

29 | 2. In any action filed pursuant to this section, the
30 | governmental entity or entities are entitled to recover
31 | reasonable costs and attorney's ~~attorney~~ fees incurred by the

1 governmental entity or entities from the date of the filing of
2 the circuit court action, if the governmental entity or
3 entities prevail in the action and the court determines that
4 the property owner did not accept a bona fide settlement
5 offer, including the ripeness decision, which reasonably would
6 have resolved the claim fairly to the property owner if the
7 settlement offer had been accepted by the property owner,
8 based upon the knowledge available to the governmental entity
9 or entities and the property owner during the 90-day-notice
10 period or the 180-day-notice period.

11 3. The determination of total reasonable costs and
12 attorney's ~~attorney~~ fees pursuant to this paragraph shall be
13 made by the court and not by the jury. Any proposed settlement
14 offer or any proposed ripeness decision, except for the final
15 written settlement offer or the final written ripeness
16 decision, and any negotiations or rejections in regard to the
17 formulation either of the settlement offer or the ripeness
18 decision, are inadmissible in the subsequent proceeding
19 established by this section except for the purposes of the
20 determination pursuant to this paragraph.

21 Section 2. Subsection (5) is added to section
22 163.3162, Florida Statutes, to read:

23 163.3162 Agricultural Lands and Practices Act.--

24 (5) AMENDMENT TO LOCAL GOVERNMENT COMPREHENSIVE
25 PLAN.--The owner of a parcel of land defined as an
26 agricultural enclave under s. 163.3164(33) may apply for an
27 amendment to the local government comprehensive plan pursuant
28 to s. 163.3187. Such amendment is not subject to rule
29 9J-5.006(5), Florida Administrative Code, and may include land
30 uses and intensities of use that are consistent with the uses
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1 and intensities of use of the industrial, commercial, or
2 residential areas that surround the parcel.

3 (a) The local government and the owner of a parcel of
4 land that is the subject of an application for an amendment
5 under this subsection shall have 180 days following the date
6 that the local government receives an application to negotiate
7 in good faith to reach consensus on the land uses and
8 intensities of use that are consistent with the uses and
9 intensities of use of the industrial, commercial, or
10 residential areas that surround the parcel. Within 30 days
11 after the local government's receipt of the application, the
12 local government and owner must agree in writing to a schedule
13 for information submittal, public hearings, negotiations, and
14 final action on the amendment, which schedule may thereafter
15 be altered only with the written consent of the local
16 government and the owner. Compliance with the schedule in the
17 written agreement constitutes good-faith negotiations for
18 purposes of paragraph (c).

19 (b) Upon conclusion of good-faith negotiations under
20 paragraph (a), regardless of whether the local government and
21 owner reach consensus on the land uses and intensities of use
22 that are consistent with the uses and intensities of use of
23 the industrial, commercial, or residential areas that surround
24 the parcel, the amendment must be transmitted to the state
25 land planning agency for review pursuant to s. 163.3184. If
26 the local government fails to transmit the amendment within
27 180 days after receipt of an application, the amendment must
28 be immediately transferred to the state land planning agency
29 for such review at the first available transmittal cycle. The
30 state land planning agency may not use any provision of rule
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1 9J-5.006(5), Florida Administrative Code, as a factor in
2 determining compliance of an amendment under this paragraph.

3 (c) If the owner fails to negotiate in good faith,
4 rule 9J-5.006(5), Florida Administrative Code, shall apply
5 throughout the negotiation and amendment process under this
6 paragraph.

7 (d) Nothing within this subsection relating to
8 agricultural enclaves shall preempt or replace any protection
9 currently existing for any property located within the
10 boundaries of the following areas:

11 1. The Wekiva Study Area, as described in s. 369.316;
12 or

13 2. The Everglades Protection Area, as defined in s.
14 373.4592(2).

15 Section 3. Subsection (33) is added to section
16 163.3164, Florida Statutes, to read:

17 163.3164 Local Government Comprehensive Planning and
18 Land Development Regulation Act; definitions.--As used in this
19 act:

20 (33) "Agricultural enclave" means an unincorporated,
21 undeveloped parcel that:

22 (a) Is owned by a single person or entity;

23 (b) Has been in continuous use for bona fide
24 agricultural purposes, as defined by s. 193.461, for a period
25 of 5 years prior to the date of any comprehensive plan
26 amendment application;

27 (c) Is surrounded on at least 75 percent of its
28 perimeter by:

29 1. Property that has existing industrial, commercial,
30 or residential development; or

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1 2. Property that the local government has designated,
2 in the local government's comprehensive plan, zoning map, and
3 future land use map, as land that is to be developed for
4 industrial, commercial, or residential purposes, and at least
5 75 percent of such property is existing industrial,
6 commercial, or residential development;

7 (d) Has public services, including water, wastewater,
8 transportation, schools, and recreation facilities, available
9 or such public services are scheduled to be provided by the
10 local government or by an alternative provider of local
11 government infrastructure consistent with applicable
12 concurrency provisions of s. 163.3180; and

13 (e) Does not exceed 2,560 acres; however, if the
14 property has been determined to be urban or suburban by the
15 state land planning agency, the parcel may not exceed 5,120
16 acres.

17 Section 4. Section 259.047, Florida Statutes, is
18 created to read:

19 259.047 Acquisition of land on which an agricultural
20 lease exists.--

21 (1) When land with an existing agricultural lease is
22 acquired in fee simple pursuant to this chapter or chapter
23 375, the existing agricultural lease may continue in force for
24 the actual time remaining on the lease agreement. Any entity
25 managing lands acquired under this section must consider
26 existing agricultural leases in the development of a land
27 management plan required under s. 253.034.

28 (2) Where consistent with the purposes for which the
29 property was acquired, the state or acquiring entity shall
30 make reasonable efforts to keep lands in agricultural
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1 production which are in agricultural production at the time of
2 acquisition.

3 Section 5. Paragraph (a) of subsection (2) of section
4 373.0361, Florida Statutes, is amended to read:

5 373.0361 Regional water supply planning.--

6 (2) Each regional water supply plan shall be based on
7 at least a 20-year planning period and shall include, but need
8 not be limited to:

9 (a) A water supply development component for each
10 water supply planning region identified by the district which
11 includes:

12 1. A quantification of the water supply needs for all
13 existing and future reasonable-beneficial uses within the
14 planning horizon. The level-of-certainty planning goal
15 associated with identifying the water supply needs of existing
16 and future reasonable-beneficial uses shall be based upon
17 meeting those needs for a 1-in-10-year drought event.
18 Population projections used for determining public water
19 supply needs must be based upon the best available data. In
20 determining the best available data, the district shall
21 consider the University of Florida's Bureau of Economic and
22 Business Research (BEBR) medium population projections and any
23 population projection data and analysis submitted by a local
24 government pursuant to the public workshop described in
25 subsection (1) if the data and analysis support the local
26 government's comprehensive plan. Any adjustment of or
27 deviation from the BEBR projections must be fully described,
28 and the original BEBR data must be presented along with the
29 adjusted data.

30 2. A list of water supply development project options,
31 including traditional and alternative water supply project

1 options, from which local government, government-owned and
2 privately owned utilities, regional water supply authorities,
3 multijurisdictional water supply entities, self-suppliers, and
4 others may choose for water supply development. In addition to
5 projects listed by the district, such users may propose
6 specific projects for inclusion in the list of alternative
7 water supply projects. If such users propose a project to be
8 listed as an alternative water supply project, the district
9 shall determine whether it meets the goals of the plan, and,
10 if so, it shall be included in the list. The total capacity of
11 the projects included in the plan shall exceed the needs
12 identified in subparagraph 1. and shall take into account
13 water conservation and other demand management measures, as
14 well as water resources constraints, including adopted minimum
15 flows and levels and water reservations. Where the district
16 determines it is appropriate, the plan should specifically
17 identify the need for multijurisdictional approaches to
18 project options that, based on planning level analysis, are
19 appropriate to supply the intended uses and that, based on
20 such analysis, appear to be permittable and financially and
21 technically feasible. The list of water supply development
22 options must contain provisions that recognize that
23 alternative water supply options for agricultural
24 self-suppliers are limited.

25 3. For each project option identified in subparagraph
26 2., the following shall be provided:

27 a. An estimate of the amount of water to become
28 available through the project.

29 b. The timeframe in which the project option should be
30 implemented and the estimated planning-level costs for capital
31 investment and operating and maintaining the project.

1 c. An analysis of funding needs and sources of
2 possible funding options. For alternative water supply
3 projects the water management districts shall provide funding
4 assistance in accordance with s. 373.1961(3).

5 d. Identification of the entity that should implement
6 each project option and the current status of project
7 implementation.

8 Section 6. Section 373.2234, Florida Statutes, is
9 amended to read:

10 373.2234 Preferred water supply sources.--The
11 governing board of a water management district is authorized
12 to adopt rules that identify preferred water supply sources
13 for consumptive uses for which there is sufficient data to
14 establish that a preferred source will provide a substantial
15 new water supply to meet the existing and projected
16 reasonable-beneficial uses of a water supply planning region
17 identified pursuant to s. 373.0361(1), while sustaining
18 existing water resources and natural systems. At a minimum,
19 such rules must contain a description of the preferred water
20 supply source and an assessment of the water the preferred
21 source is projected to produce. If an applicant proposes to
22 use a preferred water supply source, that applicant's proposed
23 water use is subject to s. 373.223(1), except that the
24 proposed use of a preferred water supply source must be
25 considered by a water management district when determining
26 whether a permit applicant's proposed use of water is
27 consistent with the public interest pursuant to s.
28 373.223(1)(c). A consumptive use permit issued for the use of
29 a preferred water supply source must be granted, when
30 requested by the applicant, for at least a 20-year period and
31 may be subject to the compliance reporting provisions of s.

1 373.236~~(4)~~~~(3)~~. Nothing in this section shall be construed to
2 exempt the use of preferred water supply sources from the
3 provisions of ss. 373.016(4) and 373.223(2) and (3), or be
4 construed to provide that permits issued for the use of a
5 nonpreferred water supply source must be issued for a duration
6 of less than 20 years or that the use of a nonpreferred water
7 supply source is not consistent with the public interest.
8 Additionally, nothing in this section shall be interpreted to
9 require the use of a preferred water supply source or to
10 restrict or prohibit the use of a nonpreferred water supply
11 source. Rules adopted by the governing board of a water
12 management district to implement this section shall specify
13 that the use of a preferred water supply source is not
14 required and that the use of a nonpreferred water supply
15 source is not restricted or prohibited.

16 Section 7. Present subsections (2) and (3) of section
17 373.236, Florida Statutes, are renumbered as subsections (3)
18 and (4), respectively, present subsection (4) is renumbered as
19 subsection (5) and amended, and a new subsection (2) is added
20 to that section, to read:

21 373.236 Duration of permits; compliance reports.--

22 (2) The Legislature finds that some agricultural
23 landowners remain unaware of their ability to request a
24 20-year consumptive use permit under subsection (1) for
25 initial permits or for renewals. Therefore, the water
26 management districts shall inform agricultural applicants of
27 this option in the application form.

28 ~~(5)~~~~(4)~~ Permits approved for the development of
29 alternative water supplies shall be granted for a term of at
30 least 20 years. However, if the permittee issues bonds for the
31 construction of the project, upon request of the permittee

1 prior to the expiration of the permit, that permit shall be
2 extended for such additional time as is required for the
3 retirement of bonds, not including any refunding or
4 refinancing of such bonds, provided that the governing board
5 determines that the use will continue to meet the conditions
6 for the issuance of the permit. Such a permit is subject to
7 compliance reports under subsection~~(4)~~~~(3)~~.

8 Section 8. Section 373.407, Florida Statutes, is
9 created to read:

10 373.407 Memorandum of agreement for an
11 agricultural-related exemption.--No later than July 1, 2007,
12 the Department of Agriculture and Consumer Services and each
13 water management district shall enter into a memorandum of
14 agreement under which the Department of Agricultural and
15 Consumer Services shall assist in a determination by a water
16 management district as to whether an existing or proposed
17 activity qualifies for the exemption in s. 373.406(2). The
18 memorandum of agreement shall provide a process by which, upon
19 the request of a water management district, the Department of
20 Agriculture and Consumer Services shall conduct a nonbinding
21 review as to whether an existing or proposed activity
22 qualifies for an agricultural-related exemption in s.
23 373.406(2). The memorandum of agreement shall provide
24 processes and procedures by which the Department of
25 Agriculture and Consumer Services shall undertake this review
26 effectively and efficiently and issue a recommendation.

27 Section 9. This act shall take effect upon becoming a
28 law.

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 1880

Committee Substitute for Senate Bill 1880 differs from the original bill as follows:

1. Does away with two different procedures to amend a local government comprehensive plan for an agricultural enclave resulting in all amendments for an enclave being subject to a 180 day negotiation period for the landowner and local government to try to work out a consensus.
2. Eliminates a 640 acre parcel of land as an agricultural enclave while retaining a 2,560 acre parcel which may be as large as 5,120 acres if the property has been determined to be urban or suburban by the state land planning agency.
3. Mandates that public services required to meet the definition of an agricultural enclave must be consistent with concurrency provisions of s. 163.3180, F.S.